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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 RODRICK MATHENY,

8 Plaintiff,

9 v.

10 UNUMPROVIDENT
11 CORPORATION, *et al.*,

12 Defendants,

13 AND CONSOLIDATED ACTION.

NO. CV-06-365-RHW

**ORDER DENYING MOTIONS
FOR SUMMARY JUDGMENT,
*INTER ALIA***

14 Before the Court are Plaintiff's Motion for Summary Judgment Against
15 Defendant UNUM Life Insurance Company of America for Breach of Insurance
16 Contract (Ct. Rec. 34), Plaintiff's Motion for Summary Judgment Against
17 Defendant U.S. Bank, N.A., d/b/a U.S. Bank Home Mortgage for Breach of
18 Insurance Contract (Ct. Rec. 36), Defendants UnumProvident Corporation and
19 Direct Response Insurance Administrative Services, Inc.'s Joint Motion for
20 Summary Judgment (Ct. Rec. 42), and various motions *in limine* and objections to
21 exhibits and deposition testimony (Ct. Recs. 77, 80, 82, 83, 84, 85, 87, 91). A
22 hearing was held on August 28, 2008. Robert Greer appeared on behalf of Plaintiff
23 Rodrick Matheny; Charles Huber appeared on behalf of Defendants
24 UnumProvident Corporation, UNUM Life Insurance Company of America, and
25 Direct Response Insurance Administrative Services, Inc.; and Scott Smith appeared
26 on behalf of Defendant U.S. Bank N.A. The Court made several preliminary oral
27 rulings at the hearing, and this Order memorializes those findings.

28 This case arose out of the accidental death of Keith Matheny, which

1 occurred on January 10, 2004. Plaintiff is Keith Matheny's son, and he seeks
2 accidental death benefits. Plaintiff filed suit against Defendants, UnumProvident
3 Corporation and UNUM Life Insurance Company of America (together "Unum"),
4 U.S. Bank N.A., and Direct Response Insurance Administrative Service, Inc.
5 ("DRIASI"), seeking damages under an Accidental Death and Dismemberment
6 policy in the form of declaratory relief and payment of the \$250,000 policy benefit
7 along with attorney's fees and costs, and also alleging additional causes of action
8 for breach of insurance contract, negligence, breach of contract to pay premiums,
9 violations of the Consumer Protection Act, RCW § 19.96, bad faith,
10 misrepresentation, promissory estoppel, and for a declaratory judgment.

11 **I. Standard of Review**

12 Summary judgment shall be granted when "the pleadings, depositions,
13 answers to interrogatories, and admissions on file, together with the affidavits, if
14 any, show that there is (1) no genuine issue as to (2) any material fact and that (3)
15 the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P.
16 56(c). When considering a motion for summary judgment, a court may neither
17 weigh the evidence nor assess credibility; instead, "the evidence of the non-movant
18 is to be believed, and all justifiable inferences are to be drawn in his favor."
19 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A "material fact" is
20 determined by the substantive law regarding the legal elements of a claim. *Id.* at
21 248. If a fact will affect the outcome of the litigation and requires a trial to resolve
22 the parties' differing versions of the truth, then it is material. *S.E.C. v. Seaboard*
23 *Corp.*, 677 F.2d 1301, 1305-06 (9th Cir. 1982). A dispute about a material fact is
24 "genuine" if the evidence is such that a reasonable jury could return a verdict for
25 the nonmoving party. *Liberty Lobby*, 477 U.S. at 248.

26 When, as here, the parties file cross-motions for summary judgment, their
27 simultaneous arguments that there are no issues of material fact does not establish
28 that a trial is unnecessary. Charles Alan Wright *et al.*, 10A *Federal Practice &*

1 *Procedure: Civil* § 2720 (3d ed. 1998). “The court must rule on each party’s
2 motion on an individual and separate basis, determining, for each side, whether a
3 judgment may be entered in accordance with the Rule 56 standard.” *Id.*; *see also*
4 *Fair Housing Council of Riverside County, Inc. v. Riverside Two*, 249 F.3d 1132,
5 1136 (9th Cir. 2001) (stating that “when parties submit cross-motions for summary
6 judgment, ‘[e]ach motion must be considered on its own merits’”).

7 **II. Analysis**

8 At the hearing and during the parties’ presentations of argument, both
9 Plaintiff and counsel for Unum and DRIASI asserted there were genuine issues of
10 material fact regarding whether Unum and DRIASI waived or are estopped from
11 enforcing a condition precedent to the insurance coverage at issue. Therefore, the
12 Court finds summary judgment is not appropriate for either Plaintiff or Unum and
13 DRIASI as against the other. Additionally, the Court finds there are genuine issues
14 of material fact as to Defendant U.S. Bank’s responsibilities and role in regards to
15 the insurance policy and billing, so the Court also denies Plaintiff’s motion for
16 summary judgment against U.S. Bank.

17 Also before the Court were the parties’ various motions *in limine* and
18 objections to exhibits and depositions. For the reasons stated at the hearing, the
19 Court reserves these motions and objections to be ruled on in the context of trial.

20 Plaintiff also filed a Motion for Order Compelling Discovery (Ct. Rec. 97).
21 Plaintiff asks for an Order compelling Defendant Unum to produce certain
22 documents initially requested in its Requests for Production. At the hearing, the
23 Court directed defense counsel to obtain the documents requested from his client
24 and to file them with the Court for *in camera* review, along with a declaration and
25 privilege log and any other necessary materials that explain Defendant’s objections
26 to the RFP. The Court also directed defense counsel to give the privilege log to
27 Plaintiff’s counsel so he could meaningfully respond to it. The Court directed
28 counsel to file this by Friday, September 5, 2008.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment Against Defendant UNUM Life Insurance Company of America for Breach of Insurance Contract (Ct. Rec. 34) is **DENIED**.

2. Plaintiff's Motion for Summary Judgment Against Defendant U.S. Bank, N.A., d/b/a U.S. Bank Home Mortgage for Breach of Insurance Contract (Ct. Rec. 36) is **DENIED**.

3. Defendants UnumProvident Corporation and Direct Response Insurance Administrative Services, Inc.'s Joint Motion for Summary Judgment (Ct. Rec. 42) is **DENIED**.

4. The parties' motions *in limine* and objections to exhibits and deposition testimony (Ct. Recs. 77, 80, 82, 83, 84, 85, 87, 91) are **RESERVED** to be ruled on in the context of trial.

5. Defendant Unum is **directed** to file the documents requested in relation to Plaintiff's Motion for Order Compelling Discovery (Ct. Rec. 97) on or before **September 5, 2008**.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this Order and to furnish copies to counsel.

DATED this 28th day of August, 2008.

s/Robert H. Whaley
ROBERT H. WHALEY
Chief United States District Judge

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